U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13951623

Date: SEP. 15, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a business management consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. Although the Director found substantial merit in the proposed endeavor in the field of business management consultation, the Director concluded that the record does not establish that the Beneficiary's endeavor has national importance. The Director also concluded the record did not satisfy the second and third *Dhanasar* prongs. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

Initially, the Petitioner described the endeavor as operating a consulting company that "will help American companies to launch, expand, and enlarge their businesses to Brazil." The Petitioner also stated that his company would "employ four (4) people full time in Year 1 and add two more employees in Year 2, and in Year 4/5 we will have 8 direct employees." Specifically, the Petitioner stated that the four initial employees would be a consultant manager, an administrative assistant, a project analyst, and "[l]egal [c]ontracts," with a "[c]lient [g]eneration [l]eader" joining in the second year along with one additional junior consultant hired in the second, third, and fourth years, respectively.

In response to the Director's request for evidence (RFE), the Petitioner changed the name of his consulting company and asserted that "[b]ased on the calculators, [his consulting company] will create 15 jobs in the first year of operation growing to 44 jobs with 26 in the high paying [p]rofessional, scientific, and technical services sector (NAICS 541610) where [m]anagement [c]onsulting firms are currently classified by the U.S. [G]overnment." The Petitioner specifically asserted in response to the RFE:

> Thus, regarding national importance, the [a]djudicating [o]fficer cannot ignore the fact that:
>
> - The endeavor has a significant potential to employ U.S. workers (44 jobs) especially because an initial change in economic activity results in other rounds of spending and economic activity, thus creating additional jobs in the region.
> - The endeavor will generate [f]ederal, [s]tate and payroll taxes in the next 5 years and employing Americans will invariably create other positive economic effects in the area and therefore the endeavor will have other substantial positive economic effects.
> - The endeavor will also broadly enhance societal welfare by creating new job positions, generating tax revenue on local, state, and federal levels.
> - Finally, the development of business that deals with U.S.-Brazil trade, as well as the development of small businesses impacts directly a matter that a government entity has described as having national importance and is also the subject of national initiatives.

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

As a model for developing U.S.-Brazil trade, in the RFE response the Petitioner provided the following outline:

- Providing location service to companies interested in expanding or relocating in [the] U.S.
- Identifying U.S. suppliers of specific products and services.
- Scheduling visits to U.S. companies for Brazilian companies that wish to do international business.
- Providing information on major business events in [the] U.S.
- Providing information on important contacts in specific [s]tates in [the] U.S. such as lawyers, accountants, interpreters, trade associations, etc.
- Supporting companies' marketing initiatives with press coverage and public relations.

In the decision, the Director concluded the record does not establish that the proposed endeavor has national importance, observing that "the record does not show that the [P]etitioner's proposed endeavor stands to sufficiently extend beyond his own company to impact the consulting industry more broadly at a level commensurate with national importance." The Director further noted that "[t]here appears to be a[n] inconsistency in the record as the business plan provided to [U.S. Citizenship and Immigration Services (USCIS) initially in support of the petition] indicates four jobs will be created in year one, whereas [the RFE response] indicates 15 jobs will be created [in the first year]."[3]

On appeal, the Petitioner clarifies that the projection of "creat[ing] 15 jobs in the first year of operation growing to 44" refers to additional "indirect jobs in the region," using U.S. Bureau of Economic Analysis Regional Input-Output Modeling System Multipliers for the state of operation.[4] Instead, the proposed endeavor would still entail four employees (including the Petitioner) at the Petitioner's consulting company in the first year, growing to a total of eight employees in the fourth year. The Petitioner also asserts on appeal that a "'significant potential to employ U.S. workers' . . . is not the same as 'potential to employ a significant number of U.S. workers.'" The Petitioner also restates on appeal the bullet-point list "regarding national importance" that an "[a]djudicating [o]fficer cannot ignore."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which an individual will work; instead, to assess national importance, we focus on the "specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that

[3] The Director attributed the change to a particular letter from a consulting company that prepared the revised business plan, submitted in the RFE response; however, the Petitioner also provided the modified business plan, with 15 jobs in the first year growing to 44 jobs, in the RFE response brief.

[4] For example, the calculation in the record indicates that, in the first year, the endeavor would indirectly contribute to 0.07 jobs in the industry of "agriculture, forestry, fishing and hunting" in the state, combined with indirect jobs in 21 other industries, totaling 14.73 indirect, abstract jobs.

have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Id.* at 889-90.

The proposed endeavor of managing business consulting company and providing business consulting services to other companies benefits those companies and clients. However, the record does not establish how the endeavor would have broader implications in terms of significant potential to employ U.S. workers or have substantial positive economic effects, beyond the Petitioner's employer and clients, as contemplated by the first *Dhanasar* prong.[5] *See Dhanasar*, 26 I&N Dec. at 889. Petitioners bear the burden of articulating how they satisfy eligibility criteria. *See* section 291 of the Act, 8 U.S.C. § 1361.

The Petitioner's distinction between a "'significant potential to employ U.S. workers' [from] 'potential to employ a significant number of U.S. workers'" is misplaced, given the context of the *Dhanasar* framework. The first *Dhanasar* prong also addresses whether an "endeavor has the potential to create a significant economic impact," as a favorable element but not a requirement. *Dhanasar*, 26 I&N Dec. at 889. Specifically, "[i]n considering whether [a] proposed endeavor has national importance, we consider its potential prospective impact" and "we look for broader implications." *Id.* Moreover, *Dhanasar* uses "significant potential to employ U.S. workers" as one example of a "substantial positive economic effect[]," reiterating the "significant economic impact" contemplated by the first prong. *Id.* at 889-90. In this case, the record lacks evidence establishing how the proposed endeavor's potential to employ between four and eight direct workers, and indirectly contribute toward up to 44 jobs in 22 industries has the potential to create a significant economic impact or have broader implications, rising to the level of a substantial positive economic effect as contemplated by *Dhanasar*. *See id.* at 889-90.

Similarly, although the Petitioner references federal, state, local, and payroll taxes that would be generated by the four-to-eight direct jobs and by the potential 44 indirect aggregate jobs, the record does not establish how that rises to the level of broader implications and substantial positive economic effects as contemplated by *Dhanasar*. *See id.* The Petitioner asserts that the business plan projects to pay, cumulatively, "$1.1 million in taxes over a 5-year period." However, the record lacks evidence establishing the relative significance of a five-year contribution of $1.1 million in payroll and corporate taxes and whether that would rise to level of a significant economic impact or have broader implications at the level of a substantial positive economic effect as contemplated by *Dhanasar*. *See id.*

The Petitioner also asserts that the endeavor would develop U.S.-Brazil trade. However, the record overall, and the bullet-point list of the Petitioner's plan for developing that trade, does not establish how the endeavor has the potential to create a significant economic impact or have broader implications, rising to the level of a substantial positive economic effect as contemplated by *Dhanasar*, rather than being confined to benefitting the Petitioner's consulting company and its clients. *See id.*

[5] The Petitioner's business plan indicates that the consulting company would help 14 clients develop brands in the first year, growing to helping 40 clients develop brands in the fifth year. The business plan also indicates that it would help one client rebrand in the first year, growing to helping six clients rebrand in the fifth year, for a total of 46 clients in the fifth year. However, the record does not establish the economic value of any of the brands the consulting company would help develop, or other factors that may establish broader implications or substantial positive economic effects of the endeavor.

For example, on appeal the Petitioner generally states that the endeavor will help "American businesses to be inserted in the Brazilian marketplace, expanding their revenues through exportation," without elaborating on the extent of the clients' revenue expansion and exportation increase, and without providing contextual information in order to establish whether that expansion and increase rises to the level of a substantial positive economic effect. Similarly, on appeal the Petitioner generally states that the endeavor will "help Brazilians to establish and develop their businesses in the U.S., again, benefitting the U.S. economy," without providing sufficient detail and context to establish the extent of the economic effect.[6]

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[6] The Petitioner also cites information from the Office of the U.S. Trade Representative and from the U.S. Department of State regarding Brazil in general; however, this information does not address the proposed endeavor, nor does it address how the proposed endeavor has broader implications or substantial positive economic effects. *See Dhanasar*, 26 I&N Dec. at 889-90.